

United States Court of Appeals for the Federal Circuit

**FOR IMMEDIATE RELEASE**

June 15, 2006

The United States Court of Appeals for the Federal Circuit proposes to amend its Rules. These amendments are subject to public notice and comment under 28 U.S.C. § 2071(b).

Attached for public comment is a revision to Federal Circuit Rule 47.3, the deletion of Federal Circuit Rule 47.6 and the addition of Federal Circuit Rule 32.1. The proposed change to Federal Circuit Rule 47.3 has been italicized.

All suggested alternatives should be submitted according to the attached "Format for Proposing Changes to Federal Circuit Rules & IOP's."

Comments should be sent to:

Office of the Clerk  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, N.W.  
Washington, D.C. 20439

**Comments must be received by the close of business on  
August 18, 2006.**

## Federal Circuit Rule 47.3

### Rule 47.3. Appearance

- (a) **Party and Amicus Curiae Must Be Represented; Pro Se Party; Attorney of Record; Of Counsel.** An individual (not a corporation, partnership, organization, or other legal entity) may choose to be represented by counsel or to represent himself or herself pro se, but may not be represented by a nonattorney. An individual represented by counsel, each other party in an action, each party seeking to intervene, and each amicus curiae must appear through an attorney authorized to practice before this court and must designate one attorney as the principal attorney of record. Any other attorney assisting the attorney of record must be designated as “of counsel.” Every attorney named on a brief must enter an appearance, *except that the filing of an entry of appearance does not apply to government officials who, by reason of their status as supervisors or heads of offices, are listed on briefs in their ex officio capacity.* Documents that are sent by the court will be sent only to the principal attorney of record.

...

**PROPOSED DELETION OF FEDERAL CIRCUIT RULE 47.6  
AND TRANSFER OF THOSE PROVISIONS, WITH CHANGES, TO NEW FEDERAL  
CIRCUIT RULE 32.1**

**~~Rule 47.6. Opinion and Order of the Court~~**

**~~(a) Disposition of Appeal, Motion, or Petition; Precedential Effect.~~** ~~Disposition of an appeal may be announced in an opinion; disposition of a motion or petition may be announced in an order. An appeal may also be disposed of in a judgment of affirmance without opinion pursuant to Federal Circuit Rule 36. A disposition may be cited as precedent of the court unless it is issued bearing a legend specifically stating that the disposition may not be cited as precedent.~~

**~~(b) Nonprecedential Opinion or Order.~~** ~~An opinion or order which is designated as not to be cited as precedent is one determined by the panel issuing it as not adding significantly to the body of law. Any opinion or order so designated must not be employed or cited as precedent. This rule does not preclude assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, or the like based on a decision of the court designated as nonprecedential.~~

**~~(c) Request to Make an Opinion or Order Precedential; Time for Filing.~~** ~~Within 60 days after any nonprecedential opinion or order is issued, any person may request, with accompanying reasons, that the opinion or order be reissued as precedential. An original and 6 copies of the request must be filed with the court. The request will be considered by the panel that rendered the disposition. The requester must notify the court and the parties of any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases who have a stake in the outcome of a decision to make precedential must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.~~

**~~(d) Public Records.~~** ~~All dispositions by the court in any form will be in writing and are public records.~~

## FEDERAL CIRCUIT RULE

### Rule 32.1. Citing Judicial Dispositions

**(a) Disposition of Appeal, Motion, or Petition.** Disposition of an appeal may be announced in an opinion; disposition of a motion or petition may be announced in an order. An appeal may also be disposed of in a judgment of affirmance without opinion pursuant to Federal Circuit Rule 36. A nonprecedential disposition shall bear a legend designating it as nonprecedential. A precedential disposition shall bear no legend.

**(b) Nonprecedential Opinion or Order.** An opinion or order which is designated as nonprecedential is one determined by the panel issuing it as not adding significantly to the body of law.

**(c) Parties' Citation of Nonprecedential Dispositions.** Parties are not prohibited or restricted from citing nonprecedential dispositions issued after January 1, 2007. This rule does not preclude assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, and the like based on a nonprecedential disposition issued before that date.

**(d) Court's Consideration of Nonprecedential Dispositions.** The court may refer to a nonprecedential disposition in an opinion or order and may look to a nonprecedential disposition for guidance or persuasive reasoning, but will not give one of its own nonprecedential dispositions the effect of binding precedent. The court will not consider nonprecedential dispositions of another court as binding precedent of that court unless the rules of that court so provide.

**(e) Request to Make an Opinion or Order Precedential; Time for Filing.** Within 60 days after any nonprecedential opinion or order is issued, any person may request, with accompanying reasons, that the opinion or order be reissued as precedential. An original and 6 copies of the request must be filed with the court. The request will be considered by the panel that rendered the disposition. The requester must notify the court and the parties of any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases who have a stake in the outcome of a decision to make precedential must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.

**(f) Public Records.** All dispositions by the court in any form will be in writing and are public records.

**FORMAT FOR PROPOSING CHANGES TO FEDERAL CIRCUIT RULES & IOP'S**

<b>Current Rule</b>	<b>Proposed Rule</b>	<b>Rationale</b>
If there is an existing rule or internal operating procedure, set it forth verbatim in this column.	When there is an existing rule, please put it verbatim in this column with the deletions lined out and the new material highlighted. If there is no pre-existing rule, simply set forth the proposed rule.	Provide as much background and rationale as you believe is necessary.

The Court would appreciate written submissions being accompanied by a diskette annotated with the word processing and virus scanning programs used.